

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Sirius XM Radio, Inc., Transferor)	IB Docket No. 12-282
)	
and)	
)	
Liberty Media Corporation, Transferee)	
)	
Applications for Consent to Transfer <i>De Jure</i>)	
Control of Sirius XM Radio, Inc.)	

ORDER

Adopted: January 3, 2013

Released: January 3, 2013

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we consider a series of applications (collectively, the “Application”) filed by Liberty Media Corporation (“Liberty Media”) pursuant to section 310 of the Communications Act of 1934, as amended (“Communications Act”) and the Commission’s rules,¹ seeking approval to transfer *de jure* control of the licenses and authorizations held or controlled by Sirius XM Radio, Inc. and its subsidiaries (collectively “Sirius”) to Liberty Media.² Based on the record established in this proceeding,

¹ 47 U.S.C. § 310(d); 47 C.F.R. § 25.119(d).

² See Liberty Media Corporation, Application for Consent to Transfer of *De Jure* Control of Sirius XM Radio Inc., Narrative, IBFS File Nos. SAT-T/C-20120817-00133, -00134, -00135, -00136, SES-T/C-20120821-00776, -00777, -00792 (filed Aug. 17 and 21, 2012 respectively) (“Narrative”). Liberty also filed applications seeking consent with respect to Wireless Telecommunication Bureau licenses, ULS File Nos. 0005353974, 0005353880 (filed August 17, 2012) and Experimental License File Nos. 0019-EX-TU-2012, 0020-EX-TU-2012 (filed Aug. 16, 2012). These applications will be acted on contemporaneously with this *Order* by the Wireless Telecommunication Bureau and the Office of Engineering and Technology. A complete list of applications is included in the Appendix. Previously, on March 20, 2012, Liberty Media filed a series of applications seeking Commission consent to the transfer of *de facto* control of Sirius to Liberty Media. Liberty Media Corporation, Application for Consent to Transfer of *De Facto* Control of Sirius XM Radio Inc., IBFS File Nos. SES-STA-20120320-00280, -00281, and -00282; SAT-STA-20120320-00054, -00055, -00056; Experimental License File Nos. 0007-EX-TC-2012, 0008-EX-TC-2012, 0009-EX-TC-2012 (filed Mar. 20, 2012). The Commission dismissed the applications in letters dated May 4, 2012 and May 10, 2012. Letter from Roderick Porter, Deputy Chief, International Bureau and Julius Knapp, Chief Engineer, Office of Engineering and Technology, to Robert L. Hoegle, Counsel for Liberty Media (May 4, 2012); Notice of Dismissal, Wireless Telecommunications Bureau, Reference Nos. 5370148, 5370149 (May 10, 2012). Liberty Media sought reconsideration of these actions, but withdrew that request contemporaneously with the filing of the Application. Liberty Media Corporation, Petition for Reconsideration of Dismissal of Applications for Consent to Transfer of *De Facto* Control, IBFS File Nos. SES-STA-20120320-00280, -00281, and -00282; SAT-STA-20120320-00054, -00055, -00056; Experimental License File Nos. 0007-EX-TC-2012, 0008-EX-TC-2012, 0009-EX-TC-2012 (filed May 30, 2012).

we find that grant of the Application will serve the public interest, convenience, and necessity.

II. BACKGROUND

A. Description of the Parties

1. Sirius XM Corporation

2. Sirius, a publicly traded company incorporated under the laws of Delaware, provides music, sports, talk and entertainment and news and information programming via two satellite radio systems – the Sirius system and the XM system.³ Currently, Sirius owns and operates eight satellites, and holds earth station, wireless and experimental licenses.⁴ As of November 1, 2012, Sirius had over 23 million subscribers.⁵

2. Liberty Media Corporation

3. Liberty Media, a publicly traded company incorporated under the laws of Delaware, holds ownership interests in a variety of businesses. Liberty Media's consolidated, wholly owned subsidiaries include Starz, LLC, which provides subscription video programming to U.S. multichannel video programming distributors, including cable operators, satellite television providers and telecommunications companies. Starz, LLC, also provides subscription video programming to the Atlanta National League Baseball Club, Inc., which owns and operates the Atlanta Braves Major League Baseball franchise; and, TruePosition, Inc., which develops and markets technology for locating wireless phones and wireless devices.⁶ Liberty Media has announced that it intends to consummate a spinoff transaction on January 11, 2013, in which Starz, LLC will become a stand-alone publicly traded corporation with the other businesses of Liberty Media being held in a separate, publicly traded corporation.⁷ Dr. John C. Malone, Chairman of the Board of Liberty Media, beneficially owns shares representing the power to direct approximately 42% of Liberty Media's aggregate voting power.⁸

B. Description of the Transaction

4. Liberty Media proposes to acquire *de jure* control of Sirius. When Liberty Media filed the Application it held 12,500,000 Series B-1 Preferred Shares, convertible into common stock representing approximately 40% of the total outstanding shares of Sirius (on an as-converted basis).⁹ Based on the preferred shares and other common stock shareholdings held by Liberty Media at the time of filing, Liberty Media stated that it owned the equivalent of 47.3% of the total outstanding common shares of

³ Narrative at 8-9.

⁴ *Id.*

⁵ *Sirius XM Radio Inc.*, Quarterly Report (Form 10-Q), at 3 (Nov. 1, 2012).

⁶ Narrative at 5-6.

⁷ On December 19, 2012, Liberty Media filed a supplement to its Application stating that it has formed Liberty Spinco, Inc. ("Spinco") which will own all of the businesses, assets and liabilities of Liberty Media not associated with Starz, LLC. Spinco will be owned by the shareholders of Liberty Media, in the same proportions, and with the same officers and directors. Upon consummation of the transaction, Spinco will be renamed Liberty Media Corporation and the entity currently known as Liberty Media Corporation will be renamed Starz. Liberty Media Corporation, Supplement to Liberty Media Corporation's Applications for Consent to Transfer Control, IB Docket No. 12-282 (filed Dec. 19, 2012) ("*Liberty Supplement*"). Liberty noted its plans for the Starz, LLC spinoff in its May 2012 application. Narrative at 5, n.5.

⁸ *Liberty Supplement* at 2.

⁹ Narrative at 2.

Sirius stock on an as-converted basis.¹⁰ Liberty Media stated that within 60 days of Commission consent of transfer of control it will purchase sufficient additional shares of Sirius' common stock and will convert its Preferred Shares so that it will own more than 50% of the outstanding shares of common stock of Sirius.¹¹ Liberty Media has since converted slightly less than half of its Series B-1 Preferred Shares to common shares and purchased additional common shares of Sirius XM.¹² Liberty indicates that the conversion of its remaining preferred stock, and the exchange of senior subordinated notes for common stock, will result in Liberty Media owning approximately 49.5% of Sirius's outstanding common stock.¹³ Liberty states that it will purchase sufficient additional shares in the open market and convert remaining preferred shares to own 50% of Sirius XM common stock, upon the Commission's consent to its acquisition of control.¹⁴

C. Application and Review Process

5. The Application was placed on Public Notice on October 2, 2012.¹⁵ Alexander Bergmann filed comments in response to the Application.¹⁶ Liberty Media filed a reply.¹⁷ Mr. Bergmann also filed a response to Liberty's reply.¹⁸ No other comments were received in response to the Public Notice.

6. Mr. Bergmann commented that a transfer of *de jure* control of a company can only take place when one party holds at least 80 percent of the voting shares.¹⁹ Mr. Bergmann also argued that "Liberty Media Control and [d]e jure change can destroy the value and purpose of Sirius XM to provide satellite radio."²⁰ In response, Liberty Media argues that Mr. Bergmann's comments do not comply with the requirements of section 309(d)(1) of the Communications Act²¹ and should be dismissed because they are procedurally defective, and provide no factual or legal basis for denying the transfer of control applications.²² Liberty Media states that the Commission has held that "50 percent or greater of the voting stock of a corporate licensee is sufficient to confer *de jure* control upon the majority

¹⁰ Narrative at 2. The Application states that Liberty Media purchased 60,350,000 shares of common stock in May 2012; 89,970,000 shares of common stock in July 2012; and 89,970,000 shares of common stock in August 2012. Liberty Media also stated that it planned to acquire 41,087,753 shares under a forward purchase contract with a planned settlement date of October 14, 2012, at which time Liberty Media would own 48% of the total outstanding voting shares of Sirius (on an as converted basis). Narrative at 2-3.

¹¹ Narrative at 5.

¹² Letter from Robert L. Hoegle, Counsel for Liberty Media, to Mindel De La Torre, Chief, International Bureau (filed Sept. 17, 2012); Liberty Media Corporation, Reply Comments, IB Docket No. 12-282, at 2-3 (filed Nov. 13, 2012) ("Liberty Reply").

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Liberty Media Corporation Seeks FCC Consent to Transfer De Jure Control of Sirius XM Radio, Inc., Applications Accepted for Filing and Pleading Cycle Established*, IB Docket No. 12-282, Public Notice, 27 FCC Rcd 12059 (Oct. 2, 2012) ("Liberty/Sirius XM Public Notice").

¹⁶ Alexander Bergmann, Comments (filed Oct. 26, 2012) ("Bergmann Comments").

¹⁷ Liberty Media Corporation, Reply Comments (filed Nov. 13, 2012) ("Liberty Reply").

¹⁸ Alexander Bergmann, Response (filed Oct. 26, 2012) ("Bergmann Response").

¹⁹ Bergmann Comments at 2, 4; Bergmann Response at 1 (stating that "if Liberty Media want to be the Owner (control) it can purchase entire SiriusXM").

²⁰ Bergmann Comments at 3.

²¹ 47 U.S.C. § 309(d)(1).

²² Liberty Reply at 1, 4-5.

shareholder.”²³ Liberty Media also states that Mr. Bergmann’s comments concern issues unrelated to the Liberty Media-Sirius XM transaction²⁴ and that the transaction itself will serve the public interest.²⁵ In response, Mr. Bergmann states that he is a party in interest because he was a long time shareholder in Sirius XM and a subscriber to the Sirius XM radio service.²⁶

7. Regardless of whether Mr. Bergmann met the other formal requirements for filing a petition to deny under Section 309(d)(1) of the Communications Act, we conclude that Mr. Bergmann’s filings do not contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest.²⁷ Moreover, Mr. Bergmann’s arguments concerning the standard for determining control do not warrant departure from the well-established Commission approach to determining *de jure* control based on stock ownership. The Commission has repeatedly held that 50 percent ownership of voting stock of a corporate entity is sufficient to confer *de jure* control on the majority shareholder.²⁸ We therefore conclude that Mr. Bergmann’s comments do not warrant further action.

D. Public Interest Analysis

8. Pursuant to Section 310(d) of the Communications Act,²⁹ we must determine whether the applicants have demonstrated that the proposed transfer of control will serve the public interest, convenience, and necessity. In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission’s rules. If the proposed transaction would not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.³⁰ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.³¹ The Applicants bear the burden of proving, by a preponderance of the

²³ Liberty Reply at 6, citing *Fox Television Stations*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8513, ¶ 151 (1995) (“*Fox Television*”). See also *Forbearance from Section 310(d) Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers*, Memorandum Opinion and Order, 13 FCC Rcd 6293, 6298, ¶ 8 (1998) (“*Section 310(d) Forbearance Order*”).

²⁴ Liberty Reply at 5-10, observing that Mr. Bergmann posed a series of questions and conclusions throughout his comments which do not directly relate to the Liberty Media-Sirius XM transfer of *de jure* control, including a discussion of international accounting standards.

²⁵ Liberty Reply at 10-13.

²⁶ Bergmann Response at 1.

²⁷ 47 U.S.C. § 309(d)(1).

²⁸ *Fox Television*, 10 FCC Rcd at 8513, ¶ 151 (1995); *Section 310(d) Forbearance Order*, 13 FCC Rcd at 6298, ¶ 8 (1998).

²⁹ 47 U.S.C. § 310(d).

³⁰ See, e.g., *Applications for Consent to the Transfer Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Report and Order, 23 FCC Rcd 12348, 12364, ¶ 30 (2008) (“*XM-Sirius Order*”); *News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3276-77, ¶ 22 (2008) (“*Liberty Media-DIRECTV Order*”); *SBC Comm. Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, ¶ 16 (2005) (“*SBC-AT&T Order*”); *Verizon Comm., Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18443, ¶ 16 (2005) (“*Verizon-MCI Order*”).

³¹ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277, ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *General*

evidence, that the proposed transaction, on balance, will serve the public interest.³² Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,”³³ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing spectrum in the public interest.³⁴ Our public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.³⁵ Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.³⁶ The Commission considers whether a transaction will enhance, rather than merely preserve, existing competition, and examines potential and future competition and its impact on the relevant market.³⁷

9. Liberty Media does not currently provide any media distribution services that directly compete with the satellite radio services offered by Sirius, and thus the proposed transfer of *de jure* control to Liberty Media does not present any horizontal competition issues. To the extent that Liberty Media provides programming to terrestrial radio, for example, coverage of the Atlanta Braves baseball team, Liberty Media is unlikely to disadvantage terrestrial radio programmers by not providing or delaying Atlanta Braves programming to them given the order of magnitude of programming fees and franchise value at risk that would far outweigh profits that would flow to Liberty Media from increased Sirius subscriptions. Thus, we find that no substantial vertical concerns are raised by Liberty Media’s programming interests. The Commission applies a “sliding scale approach” to evaluating public interest benefit claims.³⁸ Under this approach, where potential harms appear “both substantial and likely, the

Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, Memorandum Opinion and Order, 19 FCC Rcd 473, 483, ¶ 15 (2004) (“*News Corp.-Hughes Order*”).

³² See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277, ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, ¶ 25 (2002) (“*EchoStar-DIRECTV Order*”).

³³ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12364, ¶ 31; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277, ¶ 23; *News Corp.-Hughes Order*, 19 FCC Rcd at 483, ¶ 16; *EchoStar-DIRECTV Order*, 17 FCC Rcd at 20575, ¶ 26.

³⁴ See Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996 Act), *codified at* 47 U.S.C. § 157; 47 U.S.C. §§ 254, 332(c)(7); 1996 Act, Preamble; *XM-Sirius Order*, 23 FCC Rcd at 12365, ¶ 31; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277-78, ¶ 23.

³⁵ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365, ¶ 31; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277-78, ¶ 23.

³⁶ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365, ¶ 32; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3278, ¶ 24; *News Corp.-Hughes Order*, 19 FCC Rcd at 484, ¶ 17; *EchoStar-DIRECTV Order*, 17 FCC Rcd at 20575, ¶ 27.

³⁷ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366, ¶ 32; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3278, ¶ 25.

³⁸ *XM-Sirius Order*, 23 FCC Rcd 12348, 12384, ¶ 76; *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, 12506, ¶ 95 (2008); *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20332, ¶ 77 (2007); *Applications of AT&T Inc. and BellSouth Corporation for Consent to the Transfer of Control of Licenses*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5761-2, ¶ 203 (2007); *Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 11526, 11565, ¶ 109 (2006); *Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses*,

Applicants' demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.³⁹ On the other hand, where potential harms appear to be less likely or less substantial, as in this case, we will accept a lesser showing.⁴⁰ In this case, Liberty Media has not provided any evidence of specific benefits, instead relying upon the general economic benefits accruing from facilitating investment in FCC licensees and permitting investors to realize the full value of their investments.⁴¹ As we do not find substantial public interest harms with this proposed transaction, we find the general benefits that are likely to result from the transfer of control provide a sufficient basis to conclude that the transaction will serve the public interest.⁴²

III. CONCLUSION

10. Upon review of the Application and the record in the proceeding, we conclude that consent to the proposed transfer of control is in the public interest.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to sections 154(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), and Section 25.119(d) of the Commission's rules, 47 C.F.R. §25.119(d), the Applications for the transfer of control of earth and space station licenses set forth in the Appendix are granted.⁴³

Federal Communications Commission

Mindel De La Torre
Chief, International Bureau

Memorandum Opinion and Order, 20 FCC Rcd 13053, 13102, ¶ 137 (2005); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21600, ¶ 206 (2004).

³⁹ *EchoStar-DirectTV Order*, 17 FCC Rcd at 20631, ¶ 192 (quoting *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Licenses*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14825, ¶ 256 (1999)); cf. *DOJ/FTC Guidelines* § 4 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

⁴⁰ *Verizon-MCI Order*, 20 FCC Rcd at 18531, ¶ 196; *SBC-AT&T Order*, 20 FCC Rcd at 18385, ¶ 185.

⁴¹ Narrative at 11.

⁴² See *Application of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc. for Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, Report No. LB-97-49, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8893-84, ¶ 3 (WTB 1997).

⁴³ The experimental and wireless licenses identified in the Appendix will be addressed by contemporaneous action of the Office of Engineering and Technology and the Wireless Bureau.

**APPENDIX
Licenses and Grants**

I. SECTION 310(D) APPLICATIONS

A. Space Stations:

<u>File No.</u>	<u>Licensee:</u>	<u>Call Signs:</u>
SAT-T/C-20120817-00133	XM Radio LLC	S2118 <i>et al.</i>
SAT-T/C-20120817-00134	Sirius XM Radio Inc.	S2710
SAT-T/C-20120817-00135	Satellite CD Radio LLC	S2105
SAT-T/C-20120817-00136	Satellite CD Radio LLC	S2812

B. Earth Station:

<u>File No.</u>	<u>Licensee:</u>	<u>Call Signs:</u>
SES-T/C-20120821-00776	XM Radio LLC	E000158 <i>et al.</i>
SES-T/C-20120821-00777	Sirius XM Radio Inc.	E110172
SES-T/C-20120821-00792	Sirius XM Radio Inc.	E040363 <i>et al.</i>

II. PART 1 - WIRELESS LICENSE APPLICATIONS

A. Wireless Licenses:

<u>File No.</u>	<u>Licensee:</u>	<u>Call Signs:</u>
0005353974	Sirius XM Radio Inc.	WQPD459 WQKI298
0005353880	XM Radio LLC	WQJP534

III. PART 5 – EXPERIMENTAL LICENSE APPLICATIONS

A. Experimental Licenses:

<u>File No.</u>	<u>Licensee:</u>	<u>Call Signs:</u>
0019-EX-TU-2012	XM Radio LLC	WB2XCA
0020-EX-TU-2012	Sirius XM Radio Inc.	WE2XSS